IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.Rev.Pet.No. 1106 of 1999()

AGAINST THE JUDGMENT IN CRA.221/1996 of SESSIONS COURT, THRISSUR DT.24.7.99.
CC.32/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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REVN. PETITIONER: DE- FACTO- COMPLAINANT

DR.P.R.VIKRAM SINGH,
S/O.RAMAKRISHNAN VYDYAR,
POCKANCHERY, NATTIKA,
THRISSUR DISTRICT

BY ADV. SRI.S.RAJEEV
SMT.MARY TERESA DIES

RESPONDENTS: APPELLANTS/ ACCUSED & COMPLAINANT

1. **THILAKAN, S/O.KANNAPPAN,**
   MANDAMPULLY, NATTIKA DESOM AND VILLAGE.
2. **RAJEEV, S/O.KANNAPPAN, MANDAMPULLY,**
   NATTIKA DESOM & VILLAGE.
3. **SUNIL, S/O. KANNAPPAN, MANDAMPULLY,**
   NATTIKA DESOM & VILLAGE.
4. **LAXMANAN, S/O. KUNJIKALAVAN,**
   MANDAMPULLY, NATTIKA DESOM,
   AND VILLAGE.
5. **PRANKUMAR, S/O. LAXMANAN, IYYANI,**
   MANDAMPULLY , NATTIKA DESOM & VILLAGE.
6. **PRATHAPAN, S/O. LAXMANAN, MANDAMPULLY,**
   NATTIKA DESOM & VILLAGE.
7. **VIJAYAN, S/O.RAMAN, VAZHAPPILLY,**
   NATTIKA DESOM & VILLAGE.
8. **STATE OF KERALA, REP.BY THE S.I. OF POLICE,**
   VALAPPAD (CRIME NO.129 /93.)

BY ADV. SRI.P.A.CHANDRAN
PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON 22/06/2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.1106 of 1999

DATED THIS THE 22nd JUNE 2007

ORDER

The revision petitioner is the de fcto complainant in C.C.No. 32/1994 in the file of the Judicial First Class Magistrate, Kodungallur with respect to the offences under Sections 143, 147, 148, 294(b), 452, 506(ii), 427 read with Section 149 of the Indian Penal Code.

2. The prosecution allegation is that the accused 18 in number on 24-8-1993 at about 2 a.m. in the midnight, formed themselves into an unlawful assembly armed with deadly weapons with a stick , sword, axe etc. and trespassed into the residential compound of the de facto complainant, disconnected the telephone and electric lines, smashed glass panels of the windows, destroyed the tyres of a bicycle kept in the porch of the house, cut the barbed wire fencing of the residential compound and felled the coconut palms, arecanut trees and plantains altogether causing a damage to the tune of Rs.20,000/-. The trial court convicted accused 1 to 7 for the offences under

Sections 143, 147, 148, 452,506(ii), 427 read with section 149 I.P.C. It was found that the offence alleged under Section 294 (b)IPC could not be established. A1 to A7 were sentenced to undergo simple imprisonment for 15 days for the offence under Section 143 IPC, simple imprisonment for six months for the offence under Section 148 IPC, simple imprisonment for three months for the offence under Section 427 IPC, simple imprisonment for one year for the offence under Section 452 IPC, simple imprisonment for one year for the offence under Section 506(ii) IPC. It was also directed that the sentences shall run concurrently. On appeal filed by accused 1 to 7, the appellate court acquitted the accused setting aside the judgment of the Judicial First Class Magistrate Court. It is the contention of the revision petitioner/ de facto complainant that the appellate court has grossly erred in the appreciation of evidence to an extent that called for interference of this Court in exercise of the revisional jurisdiction.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 10, Exts.P1 to P6, Mos. 1 to 4, which are

handle of axe, chopper,a pair of slippers and some glass pieces. The defence examined Dws.1 to 3 and Exts.D1 to D7. DW1 is the sister of A1 to A3 who has produced Exts.D1 Purchase Certificate with respect to 7 cents of land. According to her,the above property belonged to herself and her brothers etc. She has stated that it was PW1 and his children who cut down the trees situated in the above 7 cents of land and a case is pending with respect to the same. According to her, the de facto complainant is aggrieved as he could not succeed in the civil case with respect to the property. Dws. 2 and 3 are the Doctors who allegedly examined A6 and A8 and admitted them in the respective nursing homes for the relevant period. They were examined to prove alibi with respect to A6 and A8.

4. The appellate court has observed that it is evident from the testimony of the witnesses that there was a dispute with respect to 7 cents of land which formed a pathway and with respect to which there were litigations between the father of A1 to A3 and their family on the one part and the predecessor in interest of the de facto complainant and later the de facto

complainant on the other. It was also brought out that the time of the incident the civil case was decided against the case set up by the de facto complainant, although it is the case of the de facto complainant that the matter is still pending in appeal. It has come out that PW1 had purchased an extent of 54 cents from one Kurian in the midst of litigation. The trees etc. allegedly found to have been cut down are situated in the 7 cents of property which formed the pathway and which according to the accused belonged to them. Hence the appellate court found that in the above set up of the fate of civil litigations, it cannot be held that the destruction allegedly caused was in the property of the de facto complainant. The rest of the damage caused is that tyres of the bicycle kept in the porch of the house of the de facto complainant and was damaged and the window panes broken and flower pots shattered. It was noted that none of the prosecution witnesses including PW1 has specifically identified the accused with respect to any of the overt acts. It was also pointed out that PW1 has only stated that he knew the accused and one of them tried to open the door and another

showered abuses at him and that some of the accused had four portable emergency lights and that A1 to A3 are brothers of one Devadas and rest are their friends and relatives. Further more PW2 is a witness in support of the de facto complainant in Ext.D7 criminal case filed by the de facto complainant against the accused. He has identified the accused for the first time in the dock. The evidence of PW3 who supported the prosecution is also similar to the version of PW2. Moreover he was a witness in the two civil cases on the side of PW1. PW5, another occurrence witness has also deposed in the same tenor. Further more, he is a witness in support of the prosecution in Ext.D7 proceedings instituted by the de facto complainant. Further more he had filed an affidavit before this Court in support of PW1 in one of the proceedings. PW6, the other occurrence witness has also deposed in the similar fashion. He was also a witness in support of the de facto complainant in two other cases. Hence, it was found that none of the prosecution witnesses have identified the accused individually, and apart from PW1 none of the other occurrence witnesses who supported the prosecution had come

near the scene of occurrence. They had witnessed the incident from their residences, that too in the dead of night, in light of emergency lamps. It was in the above circumstances, the appellate court accorded benefit of doubt to the accused and acquitted them.

On a consideration of the evidence adduced in the matter, I find that the appreciation of evidence by the Sessions Judge cannot be said to be defective. Evidently the revisional jurisdiction against acquittal has to be exercised cautiously and sparingly. I find that the instant case cannot be stated to be one of such a nature that warrants interference. The order of the Sessions Judge is confirmed and the revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO.1106 of 1999

ORDER

22-6-2007